

### **REMARKS**

Claims 1-33 are pending in the present application. Reconsideration of the claims is respectfully requested.

#### **I. Application to be Considered Special**

This application has received a third non-final Office Action after being withdrawn from appeal. As per MPEP § 707.02, Applicants respectfully request that the Supervisory Patent Examiner personally check on the pendency of this application and make every effort to terminate prosecution.

#### **II. 35 U.S.C. § 103, Obviousness**

The Office Action rejects claims 1-33 under 35 U.S.C. § 103 as being unpatentable over *Faber et al.* (U.S. Patent No. 6,519,570) in view of *Baldwin et al.* (U.S. Patent No. 6,310,952) and *Karmi* (U.S. Patent No. 5,884,157). This rejection is respectfully traversed.

With reference to claims 1, 3, 7-9, and 11, the Office Action states:

As per claims 1, 3, 7-9, and 11 Fader substantially discloses a system/method of conducting a time-auction among queuing customers. A bid is received from one of the queuing customers and compared with the prices being offered by the other customers waiting in line. The queuing showing a user's updated position in the queue due to having bid a higher rate to receive services from the information provider (which is readable as Applicant's claimed invention wherein it is stated that a method of providing service provider information to a client device in a distributed computer system) comprising:  
obtaining at least bids from a plurality of service providers (plurality of service providers or bids receive from one of the queuing customers) for providing a service (see., abstract, col 2, lines 36-39, fig 5, col 6, lines 47-64, specifically wherein it is stated that the customer is billed at the highest bid price for the services received from the service provider. Applicant's newly added limitation wherein said plurality of service providers is disclosed in the abstract, specifically wherein it is stated that the system/method allow vendors such as service providers, col 6, lines 47-64, plurality of bids);  
providing the bids from the plurality of service providers (abstract, col 6, lines 47-64, Applicant's newly added limitation wherein said plurality of service providers is disclosed in the abstract, specifically wherein it is

stated that the system/method allow vendors such as service providers, col 6, lines 47-64, plurality of bids).

Office Action, dated June 1, 2004. Applicants respectfully disagree. It is unclear what the newly added limitations are that are referenced in the Office Action. No amendments were made after the Final Office Action issued September 2003. Applicants assume the Office Action mistakenly uses language from a previous Office Action. However, it should be noted that no new amendments were made in the Appeal Brief filed February 11, 2004.

*Faber* teaches a system and method for conducting a time auction. More particularly, *Faber* teaches a system that enables customers to advance ahead of other waiting customers and receive services from a particular information or service provider ahead of those who are not willing to pay as much for the service. See col. 2, lines 54-57. As stated in *Faber*, "[c]onsumers interested in acquiring services must first identify the service provider who is capable of providing the required services." See col. 1, lines 16-18. In other words, *Faber* is not concerned with identifying a service provider. Rather, *Faber* is concerned with a time auction system and method for consumers who are bidding to gain access to a service provider.

Still with respect to claims 1, 3, 7-9, and 11, the Office Action states:

It is to be noted that *Fader* fails to explicitly disclose an estimated time (or travel) completion for the service. However, *Baldwin* discloses a method/system for providing easy access to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated amount of time before the caller will reach the top of the queue. A set of information includes information such as the name of the caller, the amount of money the caller is willing to pay, or bid, for a queue (see., *Baldwin*, col 4, lines 33-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of *Fader* by including the limitation detailed above as taught by *Baldwin* because such modification would provide automated access to service providers based upon an estimated amount of time.

Applicants respectfully disagree. *Baldwin* teaches a method and apparatus for providing access to an overly popular service provider. *Baldwin* teaches a queuing system that allows a caller to bid an amount of money to move up in the queue. See col. 2, lines 20-31. *Baldwin* also teaches a user interface system that informs the caller of an estimated

amount of time before the caller will reach the top of the queue. See col. 4, lines 41-51. Therefore, just like *Faber*, *Baldwin* is not concerned with identifying a service provider. Rather, *Baldwin* is concerned with a time auction system and method for consumers to bid against each other to gain access to a particular service provider. In both *Faber* and *Baldwin*, the customer has already identified a single service provider before entering the queue for the service provider.

While a plurality of service providers may be supported, *Faber* does not teach or suggest "obtaining bids from a plurality of service providers for providing a service" and "providing the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device," as recited in claim 1. The cited portion of *Faber* states:

This bidding process may continue as described above, with customers offering higher bids and advancing ahead of one another as a result. When the service provider becomes available to provide services to the next customer, a logic unit within the system will establish a real-time communications connection between the customer associated with the number-1 position in the queue at that time. The real-time communications connection may be established over a telephone network, a computer network, satellite network, wireless communications network, direct TV network, or other type of communications network, and may include an audio connection, video connection, or other type of voice or data connection. The customer in the number-1 position at the time the service provider becomes available, in effect, has won the time auction by offering to pay the highest price to receive the service provider's services ahead of all other customers in the queue. The customer is billed at the highest bid price for the services received from the service provider.

*Faber*, col. 6, lines 46-64. *Faber* fails to teach a method for providing service provider information to a single client device in which bids from a plurality of service providers are obtained and provided to the client device. Rather, *Faber* teaches that an individual client contacts only a single service provider.

*Faber* and *Baldwin* teach methods and systems for allowing customers to bid against each other for access to a single service provider. This is contrary to the present invention, which provides a method, apparatus, and program for allowing service

providers to bid against each other based on an estimated time of completion of the service. In both *Faber* and *Baldwin*, if a plurality of service providers were available, there would be no need to pit customers against one another for access to a single service provider.

More particularly, *Baldwin* teaches providing an estimated time the customer will be waiting in the queue; however, *Baldwin* does not teach determining an estimated time of completion of the service for each of the plurality of service providers. Furthermore, neither *Faber* nor *Baldwin* teaches or suggests providing the bids from the plurality of service providers and the estimated time of completion for each of the plurality of service providers to a client device.

As stated in the Office Action, *Baldwin* clearly teaches informing a caller of an estimated amount of time before the caller will reach the top of the queue, which can only be interpreted as an estimated time of a start of a service and not an estimated time of completion. Somehow, the Office Action alleges this is equivalent to an estimated time of completion. However, the only motivation for interpreting the teachings of *Baldwin* in this manner is to reconstruct the present invention using the instant claims as a template. Therefore, Appellants maintain that *Baldwin* does not teach or fairly suggest "providing the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device," as recited in claim 1.

Furthermore, *Baldwin* clearly teaches allowing customers to bid against each other for access to a service provider, rather than allowing a plurality of service providers to bid for the right to provide a service to a single customer, as in the present invention. Therefore, *Baldwin* clearly does not teach or suggest providing the estimated time of completion for the service for each of the plurality of service providers to a client device, as alleged in the Office Action.

The Office Action appears to acknowledge the deficiencies of the references, contradicting the earlier statements in the rejection. The Office Action states:

Fader and Baldwin fail to explicitly disclose obtaining a bid from a plurality of service providers. Karimi discloses a wholesaling services to other service providers that would then retail those services to their existing customers or use it to enlarge their customer base. A primary

service providers will be used to denote the company that bid and obtained the spectrum (see., abstract, col 2, lines 125). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of Fader and Baldwin by including the limitation detailed above as taught by *Karmi* because this would allow multiple service providers to use the infrastructure of a single service provider.

*Karmi* does indeed generally teach a plurality of service providers. More specifically, *Karmi* teaches that service providers can market their facilities to secondary service providers. However, the teachings of *Karmi* are not related in any way to customers waiting in a queue for a particular service. The Office Action proffers no analysis as to how the teachings of *Karmi* can somehow be applied to customers waiting in a queue for a single service or how such a combination of the teachings would somehow result in the presently claimed invention.

Applicants submit that *Karmi* cannot be properly combined with *Faber* and *Baldwin* because a telephone waiting queue is only operable for a plurality of customers and a single service provider. There is no teaching in *Karmi* that would allow a person of ordinary skill in the art to combine service providers providing facilities to other service providers, as in *Karmi*, with customers waiting in a queue. A *prima facie* case of obviousness cannot be properly based upon a prior art reference if the prior art reference requires some modification in order to meet the claimed invention and such a modification destroys the intended purpose or function of the disclosed invention in the reference. In the present case, the Office Action proposes making multiple combinations and modifications to transform a multiple-customer/single-provider system into a single-customer/multiple-provider system. A person of ordinary skill in the art would not have been motivated to make such a drastic transformation based on the applied prior art without *a priori* knowledge of Applicants' claimed invention. The Office Action may not use the claimed invention as an "instruction manual" or "template" to piece together the teachings of the prior art so that the invention is rendered obvious. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Such reliance is an impermissible use of hindsight with the benefit of applicants' disclosure. *Id.* Therefore, absent some teaching, suggestion, or incentive in the prior art, *Faber*, *Baldwin*, and *Karmi* cannot be properly combined to form the claimed invention. As a result, absent any teaching,

suggestion, or incentive from the prior art to make the proposed combination, the presently claimed invention can be reached only through the an impermissible use of hindsight with the benefit of Applicants' disclosure a model for the needed changes.

The applied references, taken alone or in combination, fail to teach each and every claim limitation. Therefore, the proposed combination of *Faber*, *Baldwin*, and *Karmi* fails to render claim 1 obvious. Claims 12 and 23 recite subject matter addressed above with respect to claim 1 and are allowable for the same reasons. Since claims 2-11, 13-22, and 24-33 depend from claims 1, 12, and 23, the same distinctions between *Faber*, *Baldwin*, and *Karmi* and the invention recited in claims 1, 12, and 23 apply for these claims. Additionally, claims 2-11, 13-22, and 24-33 recite other additional combinations of features not suggested by the reference.

More particularly, claim 3 recites:

3. The method of claim 1, further comprising:  
receiving a selection of a selected service provider from the plurality of service providers and a command to place an order for the service with the selected service provider; and  
placing an order with the selected service provider.

*Faber*, *Baldwin*, and *Karmi*, taken alone or in combination, do not teach or suggest providing the bids from the plurality of service providers and receiving a selection of a service provider. As stated above, *Faber* and *Baldwin* start with the premise that the consumer has selected a particular service provider. *Faber* and *Baldwin* are not concerned with selecting a service provider from a plurality of service providers for placing an order. *Karmi* cannot be properly combined with *Faber* and *Baldwin* to essentially reverse their teachings.

*Faber* teaches directly away from the claimed invention, because *Faber* teaches a method and system in which customers bid against one another, wherein a highest bid determines which customer receives the service first. There is only one service and, hence, only one service provider being bid upon by a given group of customers in the teachings of *Faber*. Therefore, *Faber* does not teach, suggest, or render obvious a step of "receiving a selection of a selected service provider from the plurality of service providers and a command to place an order for the service with the selected service provider," because it is the service provider that is selecting from a group of customers in

*Faber*, rather than a customer selecting from a plurality of service providers, as in the claimed invention.

Claims 14 and 25 recite subject matter addressed above with respect to claim 3 and are allowable for the same reasons. Since the applied references, taken alone or in combination, fail to teach or suggest each and every claim limitation, claims 3, 14, and 25 are not rendered obvious by the proposed combination of *Faber*, *Baldwin*, and *Karmi*.

Claim 5 recites:

5. The method of claim 1, wherein the each bid further includes an estimated time to perform the service at a location associated with a corresponding service provider.

*Faber*, *Baldwin*, and *Karmi*, taken individually or in combination, fail to teach or suggest obtaining bids from a plurality of service providers, wherein each bid includes an estimated time to perform the service at a location associated with a corresponding service provider. With reference to claim 5, the Office Action states:

As per claim 5, *Fader* discloses the claimed method as stated in claims 1 and 4 above. It is to be noted that *Fader* fails to explicitly disclose an estimated time (or travel) completion for the service. However, *Baldwin* discloses a method/system for providing easy access to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated amount of time before the caller will reach the top of the queue. A set of information includes information such as the name of the caller, the amount of money the caller is willing to pay, or bid, for a queue (see., *Baldwin*, col 4, lines 33-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of *Fader* by including the limitation detail above because such modification would provide automated access to service providers based upon an estimated amount of time.

Applicants respectfully disagree. As stated above, *Baldwin* clearly teaches informing a caller of an estimated amount of time before the caller will reach the top of the queue, which can only be interpreted as an estimated time of a **start** of a service and **not** an estimated time to **perform** the service. Somehow, the Office Action alleges this is equivalent to an estimated time of completion. Furthermore, the service provider in *Baldwin* does not submit a bid that includes this information. The customer is not able to select one service provider from a plurality of service providers based on this

information. Rather, the customer in *Baldwin* has already selected a single service provider before entering the queue for that single service provider. Still further, *Baldwin* does not mention a location associated with a corresponding service provider. The only motivation for interpreting the teachings of *Baldwin* in this manner is to reconstruct the present invention using the instant claims as a template. Therefore, Appellants maintain that *Baldwin* does not teach or fairly suggest "wherein the each bid further includes an estimated time to perform the service at a location associated with a corresponding service provider," as recited in claim 5.

Furthermore, claims 6, 17, and 28 recite obtaining route information from a route determination provider based on a first location associated with the client device and a second location associated with a corresponding service provider. With reference to claim 6, the Office Action states:

As per claim 6, Fader discloses the claimed method as stated in claim 1 above, including obtaining route information from a route determination provider based on a first location and a second location (see., Figs 1 and 2, col 3, lines 10-37, please note that the role of a service provider is to route information from a first location to a second location. it is to be noted that Fader fails to explicitly disclose an estimate time (or travel) completion for the service. However, Baldwin discloses a method/system for providing easy access to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated amount of time before the caller will reach the top of the queue. A set of information includes information such as the name of the caller, the amount of money the caller is willing to pay, or bid, for a queue (see., Baldwin, col 4, lines 33-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of Fader by including the limitation detail above because such modification would provide automated access to service providers based upon an estimated amount of time. Fader and Baldwin fail to explicitly disclose obtaining a bid from a plurality of service providers. Karmi discloses a wholesaling services to other service providers that would then retail those services to their existing customers or use it to enlarge their customer base. A primary service providers will be used to denote the company that bid and obtained the spectrum (see., abstract, col 2, lines 125). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of Fader and Baldwin by including the limitation detailed above as taught by Karmi because this would allow multiple service providers to use the infrastructure of a single service provider.



Applicants respectfully disagree. Even assuming, *arguendo*, that one would recognize that service providers "route" information, neither of the applied references teaches or suggests obtaining route information from a route determination provider as part of determining an estimated time of completion for the service. In *Faber and Baldwin*, the service being provided is completely irrelevant to the manner in which customers wait in the queue. Furthermore, as stated above, neither *Faber* nor *Baldwin* teaches or suggests providing bids from service providers. Therefore, *Faber* and *Baldwin* cannot possibly teach the further limitations that the bids include an estimated time of completion, wherein the estimated time of completion is determined by obtaining route information from a route determination provider. *Karmi* does not make up for the deficiencies of *Faber* and *Baldwin*.

The applied references fail to teach or suggest each and every claim limitation; therefore, claims 6, 17, and 28 are not rendered obvious by the proposed combination of *Faber*, *Baldwin*, and *Karmi*. Since claims 7, 8, 18, 19, 29, and 30 depend from claims 6, 17, and 28, the same distinctions between *Faber*, *Baldwin*, and *Karmi* and the invention recited in claims 6, 17, and 28 apply for these claims.

Still further, claims 7, 18, and 29 recite obtaining historical travel data from a historical databasc. The Office Action fails to address this feature and, thus, fails to establish a *prima facie* case of obviousness for these claims. *Faber*, *Baldwin*, and *Karmi*, taken alone or in combination, fail to teach or suggest obtaining historical travel data from a historical database. The applied references fail to teach or suggest each and every claim limitation; therefore, claims 7, 18, and 29 are not rendered obvious by the proposed combination of *Faber*, *Baldwin*, and *Karmi*. Since claims 8, 19, and 30 depend from claims 7, 18, and 29, the same distinctions between *Faber*, *Baldwin*, and *Karmi* and the invention recited in claims 7, 18, and 29 apply for these claims.

Therefore, Applicants respectfully request withdrawal of the rejection of claims 1-33 under 35 U.S.C. § 103.

**III. Conclusion**

It is respectfully urged that the subject application is patentable over the prior art of record and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE:

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Respectfully submitted,



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